'X' and gave his reasons in support of this finding. Secondly, as contended by counsel for the respondents and I accepted his contention, it is quite apparent and obvious that the learned district judge did not accept the evidence of the appellant and PW3 and accepted the evidence of DW1. He recounted and reviewed the material portions of the evidence of the appellant, PW3 and DW1, and came to the conclusion that the appellant 'was travelling on the wrong side of the road and he collided into the motor-van GF5870H'. That finding was tantamount to a rejection of the appellant's and PW3's evidence and also to a finding that the appellant was wholly to blame. I was reminded by counsel for the respondent of what Lord Simonds said in the well-known case of *Watt* v *Thomas*[1] at p 492:

> ... Relying on the testimony of certain witnesses called on behalf of the respondent (whom I need not name) he [counsel for the respondent] said that the learned Lord Ordinary had come to a conclusion which was diametrically opposed to that testimony, yet he had not explicitly stated that he did not accept them as witnesses of truth nor indeed, made any adverse comment upon them. Your Lordships were therefore invited to find that the learned judge had forgotten or ignored this evidence and to hold that his judgment was thereby vitiated. I believe this to be fundamentally unsound criticism. The trial judge has come to certain conclusions of fact; your Lordships are entitled and bound, unless there is compelling reason to the contrary, to assume that he has taken the whole of the evidence into his consideration. If his conclusion is inconsistent with the evidence of certain of the witnesses but he does not, in terms stigmatize them as false witnesses, it is not the proper or necessary inference that he has forgotten or ignored them; of this the present case is a cogent example, for I can well understand why the Lord Ordinary, while not accepting his evidence, did not think fit to comment unkindly on one at least of the witnesses in question.

I found the above passage extremely apposite and respectfully adopted it (with suitable modifications) as a complete answer to the arguments advanced by counsel for the appellant.

I had also reviewed the evidence adduced and found myself in total agreement with the conclusion of the learned district judge. The evidence against the appellant was overwhelming. From the evidence and, in particular, the sketch plan and the photographs and the positions of the respective vehicles after the impact, the collision must have taken place on the side of the road on which the deceased's van was travelling and the impact must have occurred near the point where the broken glasses were found. The tyre mark and again the positions of the respective vehicles after the collision showed cogently that the appellant was at the material time travelling very fast; the force of the impact had pushed the deceased's van backwards and to the side onto the grass verge and, what is more, over the drain. Having regard to such incontrovertible documentary evidence, the evidence of the appellant and PW3 that just before the collision the appellant's van was travelling at about 40 kmph could not possibly be accepted. Nor could it be accepted that the collision occurred on their side of the road. Accordingly, in my judgment, the learned district judge was right in dismissing the claim.

Appeal dismissed.

Solicitors: *Murphy & Dunbar*; *Fam Tay & Lee*.

Reported by *Terence Tan Bian Chye*

Overseas-Chinese Banking Corporation Ltd v Norman Wright & Ors

HIGH COURT (SINGAPORE) – SUIT NO 3190 OF 1987
CHAO HICK TIN JC
15 MAY 1989

Civil Procedure – Interrogatories – Whether they should be allowed – Discovery – Further and better list of documents – Whether necessary for case – Whether interrogatories and list of documents merely for 'fishing' purposes

Tort – Libel – Defence of fair comment

An article written in a newspaper reported the plaintiffs' plans to recruit top bankers with the names of the persons sought being given. The first defendant wrote to the newspaper, commenting on the article. The first defendant wrote the letter in his capacity as managing partner of the second defendant, and he was also managing director of the third defendant. The letter, which was published by the newspaper, accused the plaintiffs of 'rank amateurism or carelessness' to have allowed the names of the persons it was seeking to recruit to be revealed to the press. The plaintiffs allege by reason of the publication of the letter they had been injured in their reputation and brought into public scandal, odium and contempt. They claim damages and an injunction.

In their defence, the defendants deny that the words were defamatory of the plaintiffs. In the alternative, they say that those words are a fair comment on a matter of public interest. In accordance with the Rules of the Supreme Court, the defendants have set out in their defence particulars of fact upon which the comment was based. Pursuant to an order of court, the first defendant furnished a list of particulars listing out the reasonable steps that would be taken by a reputable recruitment firm to ensure that the names of potential candidates were not prematurely publicly announced. Later, the first defendant and the third defendant were given leave to serve on the plaintiffs certain interrogatories. These asked (1) whether the plaintiffs were seeking to recruit top-ranking bankers; (2) whether the plaintiffs retained a reputable executive search firm to assist in the process of recruitment; (3) were the plaintiffs seeking to recruit four named persons; (4) whether the publication of the names of the persons sought to be recruited in the newspaper was without the consent of the plaintiffs' staff, the persons named in the newspaper, and the firms at which those persons were employed at the time of the publication; (5) whether the plaintiffs announced on a certain date the appointment of those persons sought to be recruited, (6) and (7) whether the plain-

tiffs took any steps to ensure that the persons sought to be recruited did not have their names prematurely disclosed and what these steps were. In the meantime, both parties were ordered to serve on each other a list of documents with an affidavit verifying the same. The defendants applied for an order that the plaintiffs serve on them a futher and better list of documents including documents relating to the recruitment of the four top bankers. Pursuant to this, an order was made by an assistant registrar ordering the plaintiffs to make and serve a further and better list of documents which was to be confined to documents which formed the foundation of the two press releases attached to the letters written by the plaintiffs to the newspaper. The parties appealed against the orders giving the defendants to serve the interrogatories and the order requiring the plaintiffs to serve a further and better list of documents.

Held, allowing the plaintiffs' appeal:

(1) Interrogatories are admissible if they come to support the applicant's case or to impeach or destroy the opponent's case.

(2) Interrogatories will only be allowed as shall be considered necessary either for disposing fairly of the matter or for the saving of costs. If the admission of a fact can be proved by a witness who will be called at the trial, interrogatories will not, as a rule , be allowed because they would add to the costs.

(3) Where the defence of fair comment is raised, a defendant is allowed to interrogate as to the truth of the matter or particulars pleaded in order to obtain an admission.

(4) The answers to interrogatories 1, 3, and 5 are self-evident and could have been easily obtained by putting the questions to the witnesses for the plaintiffs. The plaintiffs are also not in a position to answer interrogatory 4.

(5) The defence had failed to set out specific instances of the plaintiffs' negligence. If they had particularized specific instances of negligence, then interrogatories could be raised on those specific instances of negligence.

(6) By interrogatories 6 and 7, the defendants are in effect asking the plaintiffs, 'please tell us what steps you have not taken so I could show negligence on your part and thus substantiate my comment as fair comment.' This was a clear case of fishing.

(7) The defendants hoped that through the interrogatories process, they would be able to stumble upon something which will show their comment to be fair. This was not a legitimate function of interrogatories. A person who has defamed another cannot by the plea of fair comment be allowed to pry into the affairs of the injured.

(8) Although it was not necessary to decide the point, as a matter of logic, if the defendant wishes to rely on certain facts to support his plea of fair comment, those facts must, at least, be at the back of his mind when making the comment.

(9) As regards the order for the plaintiffs to serve a further and better list of documents, generally, a list of documents, once verified, is conclusive. But a party may be ordered to give a further and better list where it appears from the list itself, or from the documents referred to in it, or from admissions made, that the party had other documents in his possession, custody or power.

(10) The facts did not indicate that there were other documents of the plaintiffs which fell within any of the above categories. Even if there were such documents, those that came into existence after the alleged libel had been published can have no bearing where the plea is fair comment.

(11) The defendants' application for a further and better list of documents had exactly the same aim as their application for interrogatories, and was no less a fishing expedition than the interrogatories.

Cases referred to

1 *Cunningham-Howie* v *Dimbleby & Sons* [1950] 2 All ER 882 (refd)
2 *AG* v *Gaskill* (1881-2) 20 Ch D 519 (refd)
3 *Metropolitan Saloon Omnibus Co (Ltd)* v *Hawkins* (1859) 4 H&N 792, 146, 157 ER 769, 792 (folld)
4 *Zierenberg and Wife* v *Labouchere* [1893] 2 QB 183 (folld)
5 *Yorkshire Provident Life Assurance Co* v *Gilbert & Rivington* [1895] 2 QB 148 (refd)
6 *Peter Walker & Son* v *Hodgson* [1909] 1 KB 239 (distd)
7 *Cohen* v *Daily Telegraph* [1968] 1 WLR 916 (folld)
8 *Kent Coal Concessions* v *Duguid* [1910] 1 KB 904 (distd)

Legislation referred to

Rules of Supreme Court 1970 O 78 r 3(2)

Charles Anthony St John Gray QC (with *Ronnie Quek*) for the plaintiffs.

Patrick Milmo QC (with *Koh Kok Wah*) for the defendants.

Cur Adv Vult

Chao Hick Tin JC: This is an appeal against two interlocutory orders made by the assistant registrar on 31 October 1988 and 13 January 1989. Under the first order, leave was granted to the first and third defendants to issue certain interrogatories to the plaintiffs. The second order requires the plaintiffs to furnish a further and better list of documents. This is an action for libel on account of a certain letter which the first defendant wrote in his capacity as the managing partner of the second defendant. He is also the managing director of the third defendant. The matter arose out of a news article appearing in a newspaper, the *Business Times*, of 17 November 1987. In this news article, written by one Alvin Tay, it was reported that 'OCBC plans to recruit four top-ranking bankers' and the names of the four persons were given therein. In the letter written by the first defendant on the subject of maintaining confidentiality in the search for executives, and which was published in the *Business Times* of 28-29 November 1987, the following words, among others, appeared:

> A case of how not to go about attracting top executives was demonstrated in the front page article which appeared in your 17 November issue regarding OCBC's reported plans to hire four named senior banking officials. Professional executive search firms would recoil in horror at such publicity.
>
> Your reporter has met his professional duty to 'find and report the news', but there is a prima facie case of rank amateurism or carelessness at OCBC to have allowed such a breach of confidentiality to happen.
>
> It shows clearly how difficult it is for an organization to maintain confidentiality when it conducts its own search. The leakage is potentially damaging to those named, at the very least embarrassing, and the effect on the morale of their present staff and indeed, on that of the staff at OCBC, must be unfortunate.

The plaintiffs allege that by reason of the publication of those words they had been injured in their reputation and brought into public scandal, odium and contempt. They claim for damages and for an injunction.

In their defence filed, the defendants deny that the words complained of were defamatory of the plaintiffs. In the alternative, they say that those words are a fair comment on a matter of public interest, ie the methods of recruitment of senior executive officers by a major banking corporation. The defence of justification is not pleaded. As is required under O 78 r 3(2) of the Rules of the Supreme Court ('RSC')and in accordance with case law where the defence of fair comment is raised (*Cunningham-Howie* v *Dimbleby & Sons*[1]) the defendants have set out in their defence certain particulars of facts and matters upon which the comment was based. I do not think it is necessary for me to set out all the facts and matters enumerated except for para 6(2) and (8) which reads:

> 6(2) Executive search firms commonly act on behalf of commercial concerns to search for and select senior executives for recruitment by their clients. Any reputable search firm will carry out such duties in confidence in relation to the identities of their clients and selected executives, and will take all reasonable steps to ensure that the names are not prematurely publicly disclosed.
>
> (8) The plaintiff had failed or neglected to take any sufficient steps to ensure that the facts and matters mentioned in Alvin Tay's said article were not publicly disclosed until the appointment of the four persons were officially announced.

Pursuant to an order of court granted at the instance of the plaintiffs, the first defendant furnished further particulars in relation to the said paras 6(2) and 6(8) of the defence. The first defendant listed out in 22 subparagraphs what are the reasonable steps a reputable search firm will take to ensure that the names of potential candidates are not prematurely publicly announced. In answer to the particulars required under para 6(8), the first defendant was only able to say that the plaintiffs failed or neglected to take one or more of the said 22 measures (mutatis mutandis). Subsequently, on 27 August 1988, the first and third defendants applied for leave to serve on the plaintiffs certain interrogatories and I think I should set them out in full:

> 1 Was not the plaintiff company in November 1987, or if in some other month what month, seeking to recruit four, or if some other number what number, top-ranking bankers to fill senior positions within the company?
>
> 2 If the answer to the first interrogatory is yes, is it not a fact that the plaintiff company did not retain an independent and reputable executive search firm, or any firm carrying on a similar practice, to recruit or assist the company in the recruiting of the said bankers?
>
> 3 If the answer to the first interrogatory is yes, did not the persons whom the plaintiff company were seeking to recruit include the following persons, or some and which of them, Mrs Elizabeth Sam, Mr Ng Tat Pun, Mr Lai Teck Poh and Mr Goh Chee Hiong?
>
> 4 Look at the article by Alvin Tay in the issue of *Business Times* of 17 November 1987, if the answer to the third interrogatory is yes, was not the publication of the names of the said persons in the said article without the knowledge and consent of:
>
> (a) staff at the plaintiff company's offices,
> (b) the persons named,
> (c) the firms by which such persons were currently employed or at which they were working,
>
> or without the knowledge and consent of some and which of the above mentioned?
>
> 5 Did not the plaintiff company on 11 December 1987 announce the appointments of Messrs Ng, Lai and Goh as executive vice-presidents of the company, and on 29 December 1987 announce the appointment of Mrs Sam as head of the investment banking division of the company?
>
> 6 Did the plaintiff company take any steps to ensure that the names of the said persons were not disclosed in a newspaper prior to the said announcements of their appointments, and in particular in the said article of Alvin Tay?
>
> 7 If the answer to the sixth interrogatory is yes, what steps did the plaintiff company take?

The assistant registrar who heard the application granted leave to the first and third defendants to serve the interrogatories.

In the meantime, pursuant to a summons for directions, an order was made that the parties should serve on each other a list of documents with an affidavit verifying the same. This was done by both the plaintiffs and the first and third defendants. By a notice for further documents filed on 18 November 1988, the first and third defendants applied for an order to require the plaintiffs to make and serve on the first and third defendants a further and better list of documents. On 13 January 1989 the application was partially granted by the assistant registrar who ordered that the plaintiffs do make and serve a further and better list of documents which shall be confined to documents which formed the foundation of two press releases attached to two letters from the plaintiffs to the *Business Times* dated 11 December 1987 and 29 December 1987. The plaintiffs have appealed against the order granting leave to the first and third defendants to issue the interrogatories. Both the plaintiffs and the first and third defendants have appealed against the order requiring the making and serving of a further list by the plaintiffs, with the plaintiffs taking the stand that the order should not have been made at all and the defendants contending that the order given is too restrictive.

Interrogatories

The first question for my consideration is whether the first and third defendants should be given leave to serve the interrogatories on the plaintiffs. Generally, interrogatories are admissible if they come to support the applicant's case or to impeach or destroy the opponent's case. The object of interrogatories is to 'see whether the party

who interrogates cannot obtain an admission from his opponent which will make the burden of proof easier than it otherwise would have been' : see Cotton LJ in *AG v Gaskill*[2] at p 528. Obviously each case has to be decided in the light of the facts set out and/or issues raised in the pleadings. In any event, interrogatories will only be allowed as shall be considered necessary either for disposing fairly of the cause or matter, or for saving costs. If the admission of a fact can be proved by a witness who will be called at the trial, interrogatories will not, as a rule, be allowed because it will not save but add to costs.

In relation to defamation actions the following statements at para 26/1/11 in the *Supreme Court Practice* (1988 Ed) are pertinent:

> Where fair comment is pleaded and the defendant has given particulars of the matter on which his comments were based, he may interrogate the plaintiff *as to the truth of the matter relied on in the particulars* ...
>
> Where fair comment only was pleaded, interrogatories to the plaintiff as to similar statements in other newspapers and as to the truth of the libels were disallowed.
>
> In an action for libel or slander, the defendant will not, as a rule, be allowed, before he is given particulars, to interrogate or get discovery for the purposes of finding out whether he has a defence or not ... (Emphasis added)

In other words, where a defence of fair comment is raised, a defendant is allowed to interrogate as to the truth of the matter or particulars pleaded in order to obtain an admission.

As stated above, in their defence, the first and third defendants have merely alleged that the plaintiffs had 'failed or neglected to take any sufficient steps to ensure that the facts and matters... were not publicly disclosed...' When asked to further particularize, all that the first defendant managed to do was to set out 22 steps which a reputable executive search firm would undertake. But he was not able to indicate which of the 22 steps the plaintiffs had failed to undertake or observe. In fact a few of the 22 steps could have no application to the instant case. It seems to me abundantly clear that the first defendant's comment was based entirely on the facts and matters reported in the news article of 17 November 1987: see the first defendant's solicitors' letter of 4 December 1987. The first defendant does not appear to know what went wrong or how the article came about to be written and published.

Mr Gray, counsel for the plaintiffs, cited to me three cases to support his contention that interrogatories of this kind should not be allowed in the present circumstances: *Metropolitan Saloon Omnibus Co (Ltd)* v *Hawkins*;[3] *Zierenberg and Wife* v *Labouchere*;[4] and *Yorkshire Provident Life Assurance Co* v *Gilbert & Rivington*.[5] Although these three cases were cases decided in the last century, Mr Milmo, counsel for the first and third defendants, did not argue that they are no longer good law. In *Metropolitan Saloon*, the court refused a shareholder's application to inspect the books of the company for the purpose of proving a plea of justification in an action against him for libel imputing insolvency to the company. Pollock CB at p 794 said that 'a person who ventures to publish a libel, or utters slander, should be in a condition to justify his conduct, and not come to the court to ask for assistance to get up some proof.' Similarly, Martin B said at the same page that the defendant in that case must give the court 'reason to believe that there was some particular document, *which he could specify and put his hands upon*, which would support his case; and neither a court of law, or equity, would give him an opportunity of searching the plaintiffs' books, in order to get up a defence' (emphasis added). In *Zierenberg*,[4] the defendant called the plaintiffs, who were husband and wife and who were managing a home for inebriates, 'charity swindlers and impostors and the home is a monsterous swindle.' The defendant, on being sued for libel, pleaded a justification in general terms that the statement complained of was true. The defendant was asked to furnish further particulars. The defendant refused and said that if he was to answer those questions, he ought not to be obliged to do so until he was allowed discovery by means of interrogatories and inspection of books. There, the Court of Appeal held that the defendant was not entitled to discovery for the purposes of finding out whether he had a defence or not. Kay LJ's answer to the defendant's contention was most succinct at p 189:

> If the defendant says that he is unable to state any such facts without discovery, the answer is simple and conclusive – he ought not to have published the libel, and cannot plead any justification for having done so.

Turning to *Yorkshire Provident Life Assurance*[5] where the defendant pleaded both justification and fair comment, the court there held that the issues to be tried in the action were limited only to the matters referred to in the particulars and the defendant could only obtain discovery to documents relating to those matters. Lindley LJ said at p 152:

> I think it would be a very bad precedent to suggest that a person can simply by libelling another, obtain access to all his books to see whether he can justify what he has said or not. I think it would be very lamentable if we should say, when a person has libelled another and has justified, and has given particulars, that he is entitled to more than discovery of that which relates to those particulars.

While *Metropolitan Saloon*[3] and *Zierenberg*[4] are cases dealing with the defence of justification, I do not see any reason why the principles established therein should not apply to a case where the defence is just fair comment. After all, in a defence of fair comment, the defendant must state the facts or matters upon which his comment was based. I do not see any logic why a defendant who

pleads fair comment should have more liberal rights of discovery. No such distinction was drawn in *Yorkshire Provident Life Assurance*,[5] where both defences of justification and fair comment were pleaded.

I will now examine the interrogatories. In my view the answers to interrogatories nos 1, 3 and 5 are self-evident. The answers could have been obtained quite easily by putting the questions to the main witness for the plaintiffs. Indeed the answers are in the documents disclosed by the plaintiffs. As regards interrogatory no 2, a question to that effect to the same witness would also have solicited the answer. You do not need to serve an interrogatory to obtain that. Indeed, unnecessary costs are added thereby. Interrogatory no 4 seems to assume that the publication of the news article on 17 November 1987 was instigated by or made with the consent of the plaintiffs. That is not the plaintiffs' case as set out in the statement of claim and cannot be correct as can be seen from the statement in the news article that 'official confirmation from OCBC was not available yesterday.' So I do not see how the plaintiffs are in a position to answer interrogatory no 4. Therefore, the question of seeking the consent of those people listed could not have arisen. It seems to me abundantly clear that the thrust of this whole set of interrogatories is in nos 6 and 7. The first and third defendants in their defence allege that the plaintiffs had been negligent. As I have pointed out above, they have not set out any specific particulars of negligence. If they had particularized specific instances of negligence, then interrogatories could be raised on those specific particulars of negligence. Without particulars, they cannot interrogate. The further particulars which the first defendant furnished clearly show that the first defendant did not know what measures the plaintiffs had failed to undertake. By interrogatories nos 6 and 7, the defendants are, in effect, asking the plaintiffs, 'please tell us what steps you have not taken so that I could show negligence on your part and thus substantiate my comment as fair comment.' In my opinion, the interrogatories sought by the first and third defendants are in truth a clear case of fishing. This cannot be allowed. They hope, through this process, to be able to stumble upon something which will show that their comment was fair or even enabled them to plead justification. This is not a legitimate function of interrogatories.

The instant case is quite different from *Peter Walker & Son* v *Hodgson*[6] where the Court of Appeal allowed interrogatories to be put by the defendant to the plaintiff. There the object of the interrogatories was to procure admission of facts. The need for such admission arose out of the defence. As Kennedy LJ said at p 257:

> In the present case it is plain, as I have already observed, that the alleged slander does contain and involve averments of fact of a material character affecting the plaintiffs, and it appears to me that the defendant is well within established legal principle in asking by interrogatories for admissions as to those material facts ...

I do not think the court should render any assistance to the first defendant in the instant circumstances. He should stand or fall on the facts known to him. If the first defendant says, as he is saying, that the words complained of were not defamatory, then let that issue be determined by the court at the trial. If, as he has pleaded in the alternative that those words were a fair comment, then he should show that his comment was fair based on whatever facts and circumstances known to him. If he says that the news article speaks for itself, so be it. He should defend the action on that basis. He should not be permitted to raid the cupboards of the plaintiffs to see whether he could find anything more to rely upon to show that his comment was fair. That is clearly not a legitimate purpose of interrogatories. I think to grant the first and third defendants this application would only encourage irresponsible conduct. A person who has defamed another, cannot by the mere plea of fair comment, be entitled to a licence to pry into the affairs of the injured. This would really be adding insult to injury. That is clearly not right. I find that totally unacceptable. To permit the issue of interrogatories in such circumstances would set a bad precedent. It would encourage loose tongues, which in turn could lead to social discord and more litigation . For all these reasons, I would refuse the interrogatories.

A related argument raised is whether, where the defence of fair comment is pleaded, a defendant can rely upon facts which he did not know at the time the comment was made. Doubts were expressed by the Court of Appeal in *Cohen* v *Daily Telegraph*[7] as to whether the defendant must show that the facts upon which he relied as the basis of his comment must have been in the forefront of his mind when he made the comment (see obiter dicta of Lord Denning at p 920). However, both Mr Gray and Mr Milmo were prepared to accept the following statement in para 712 of *Gatley on Libel and Slander* (8th Ed) as representing the correct law:

> 712 Existing facts only. The facts which the defendant seeks to prove as the basis of his comment must have existed and, *semble* have at one time, at least, been known to him, when he made the comment. This follows from the nature of the defence. The fairness of the comment must have relation to the state of mind of the commentator. Comment cannot be protected by reference to facts which the writer at the time did not intend to criticize.
>
> *But though the facts on which the defendant relies as the basis of his comment must have been present in his mind at the time when he made the comment* and must have really existed, it is not necessary for him to prove that he then knew the facts to be true, or was acquainted with the evidence by which their truth could be displayed. (Emphasis added)

I do not think I need to decide this point in the present appeal, though I must say that as a matter of logic, if a defendant wishes to rely on certain facts to support his plea of fair comment, surely those facts must, at least, be at the back of his mind when making his comment. Otherwise I do not see how those facts could have any relevance to his comment.

Further and better list

I now turn to deal with the application for a further and better list. In the first and third defendants' solicitors' letter of 2 November 1988 they stated that the plaintiffs' list of documents omitted documents which should be included and requested the plaintiffs to file a further and better list of documents which should include certain categories of documents and broadly stated they are these:

(i) documents relating to the plaintiffs' endeavours in and around November 1987 to recruit the four top bankers;
(ii) correspondence between the plaintiffs and the four persons, including the contracts of employment and all records of interviews with those persons;
(iii) plaintiffs' corporate manuals or circulars relating to the process of hiring senior executives and the handling and security of personnel files;
(iv) internal memoranda, etc kept by the plaintiffs' personnel manager (not covered by [iii] above) concerning the selection of the four persons and the distribution list of all such memoranda;
(v) notes of telephone conversations on 16 and 27 November 1987 between Alvin Tay and David Cheam, a vice-president of the plaintiffs in charge of public relations;
(vi) memoranda or circulars to staff touching on the disclosure or non-disclosure of information relating to new staff to be appointed, either in general or specifically in regard to the four persons; and
(vii) all correspondence to and from whomsoever concerning the article of 17 November 1987 and the letter of the first defendant published in the *Business Times* of 28-29 November 1987.

Generally a list of documents, once verified, is conclusive. But a party may be ordered to give a further and better list of documents where it appears '(a) from the list itself, or (b) from the documents referred to in it, or (c) from admissions made either in the pleadings of the party making discovery or otherwise, that the party making discovery has or has had other relevant documents in his possession, custody or power': see *Supreme Court Practice* (1988 Ed) para 24/3/5. Mr Milmo in particular relied upon the following sentence in the same para of the *Supreme Court Practice* to contend that a further and better list should be ordered:

> An order may be made where the basis on which the first list has been made, is palpably wrong – where the party has misconceived his case so that the court is confident that if he had conceived it properly he would have disclosed further documents.

It does not appear from the list filed by the plaintiffs that they have any other relevant documents in their possession. Neither does it appear from any pleadings filed by the plaintiffs. The next question is whether that appears from the documents referred to in the list. I have considered the documents disclosed in the plaintiffs' list, including the two press releases, and I do not think there is anything in those documents which necessarily suggest that there are other specific and relevant documents in the possession of the plaintiffs. Even the assistant registrar who granted the limited order (that the further list to include only those documents which formed the foundation of the two press releases issued by the plaintiffs on 11 December 1987 and 29 December 1987, announcing the appointment of the four persons) did not appear to be completely satisfied that there were, in fact, other relevant documents as the order for costs which he made for that application was in these terms: 'costs ... shall be costs in the cause in the event that the plaintiffs' further and better list discloses any documents other than those in the plaintiffs' list filed on 19 October 1988 and that there shall be no order as to costs in the event that the plaintiffs' further and better list does not disclose any document other than those in the plaintiffs' list filed on 19 October 1988.' The two press releases merely announced the appointments of the four persons and gave a brief personal background of each of them. The four persons are known personalities in the banking circles. The first press release also referred to some internal changes regarding two other existing senior officials. Granted that in a general sort of way, one may feel that there may be a letter of offer of appointment issued to the four persons and perhaps even a letter of acceptance by them. I can only surmise that it must be because of the uncertainties that the assistant registrar's order was not worded more precisely. What exactly are the documents the plaintiffs should disclose pursuant thereto? The present case, in my view, can be distinguished from *Kent Coal Concessions* v *Duguid*[8] where the plaintiff disclosed balance-sheets which were quite clearly compiled from books, but disclosed no books. There a further affidavit was ordered. Farwell LJ, who delivered the majority judgment, explained the need to disclose the books in this way (at p 915):

> The plaintiffs are not, of course, bound to give the defendants permission to range at large through their books, but they are bound to schedule such portions of their books as relate to the matters set out in the balance-sheets and reports already exhibited and admitted to be relevant. A balance-sheet is worthless without the books from which it has been made up.

In any event, I do not see how these additional documents, even if available, are relevant to the issues raised in this action, ie whether the alleged words were defamatory of the plaintiffs and if so, whether the defence of fair comment is available to the defendants. The press releases were issued weeks after the objectionable letter was published. Documents that came into existence well after the alleged libel had been published can have no bearing where the plea is fair comment: see *Cohen* v *Daily Telegraph*.[7]

Moreover, I would point out that Mr Milmo's main contention for an order is that the basis upon which the plaintiffs prepared the list of documents was palpably wrong. With respect, I do not share that view. This is because I see the aim of this application as no different from the application for interrogatories. This is really a second attempt by the first and third defendants to raid the cupboards of the plaintiffs to see whether they could find anything useful there for their case. This is no less a 'fishing' expedition and for the reasons dealt with above on interrogatories, I think this is also a ground for which this court would refuse the application.

In the result, I would allow the two appeals by the plaintiffs and set aside the two orders made by the assistant registrar. The appeal of the first and third defendants is dismissed. The costs of the hearing of the two applications before the assistant registrar as well as the hearing of the appeals before me shall be the plaintiffs' in any event.

Order accordingly.

Solicitors: *Shook Lin & Bok*; *Arthur Loke & Partners*.

Reported by *Terence Tan Bian Chye*

Lim Tian Seng v Chong Lee King

HIGH COURT (SINGAPORE) – APPEAL IN DCA 69/87
TAN TEOW YEOW JC
17 APRIL 1989

Civil Procedure – Appeal from district court – Finding of fact

Tort – Negligence – Motor accident – Whether negligence proved

The appellant, while riding a motorcycle, was involved in a collision with a car driven by the respondent. The appellant suffered personal injuries and sued the respondent for damages. The case was heard before a district judge who dismissed the appellant's claim with costs. On appeal, the appellant submitted that the district judge should have accepted the appellant's evidence that the respondent's car had swerved into his path and thus caused the accident.

Held, dismissing the appeal:

(1) Whether the respondent had swerved into the path of the appellant was purely a question of fact.

(2) The sketch plan drawn by the police after the accident offered little help.

(3) From the evidence, the appellant had failed to prove any negligence on the part of the respondent. The appeal was therefore dismissed with costs

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No 26 of 1989.]

HE Cashin for the appellant/plaintiff.
Peter Madhavan for the respondent/defendant.

Cur Adv Vult

Tan Teow Yeow JC: On 24 July 1985 in the afternoon the appellant was riding his motorcycle along Sembawang Road towards the direction of the city when he lost control of his motorcycle, fell and sustained personal injuries. He said he was travelling in the extreme left lane of the road when a motorcar which was earlier travelling on his right suddenly swerved into his path. He had no choice but to apply the brakes and thus lost control of his motorcycle. He said that when the motorcar swerved into his path the distance between them was about three metres. In his cross-examination and re-examination he also admitted that the road was sandy and the condition was not very good.

The respondent, on the other hand, testified in the court below that during that relevant afternoon he was also travelling along the same direction in his motorcar along Sembawang Road. When approaching the junction of Sembawang and Jalan Mata Ayer, he saw two vehicles in front of him signalling to turn right. He turned on his signal to filter into the inner lane. He also looked into his rear view mirror and saw no vehicles behind him. After passing the junction of Jalan Mata Ayer he looked again at his rear view mirror and noticed that one motorcyclist had fallen. He then stopped his motorcar to render assistance. He also called the ambulance. The two vehicles had not come into contact with each other.

The learned district judge in the court below having heard the evidence found that the respondent's motorcar was some distance away from the appellant's motorcycle when the appellant lost control of his motorcycle. He also found that the respondent did not cause the appellant to apply the brakes of his motorcycle. He dismissed the appellant's claim with costs.

The appellant appealed before me. The only question of fact in this appeal is whether the respondent had swerved into the path of the appellant at a short distance of three metres. Counsel for the appellant has argued that the learned district judge should have accepted the evidence of the appellant that the respondent's motorcar